

Department of Defense

225.302

(d)(1) Aluminum clad steel wire. Sperm oil.

225.109 Solicitation provisions and contract clauses.

(a) Use the provision at 252.225-7000, Buy American Act—Balance of Payments Program Certificate, instead of the provisions at FAR 52.225-1, Buy American Certificate, and FAR 52.225-6, Balance of Payments Program Certificate. Use the provision in any solicitation that includes the clause at 252.225-7001, Buy American Act and Balance of Payments Program.

(b) For oral solicitations inform prospective vendors that only domestic and qualifying country end products are acceptable, except nonqualifying country end products are acceptable if—

(i) The items are excepted either on a blanket or an individual basis; or

(ii) The price of the nonqualifying country end product is the low offer under the evaluation procedures in 225.105.

(d) Use the clause at 252.225-7001, Buy American Act and Balance of Payments Program, instead of the clauses at FAR 52.225-3, Buy American Act—Supplies, and FAR 52.225-7, Balance of Payments Program, in solicitations and contracts for supplies or services that require the furnishing of supplies.

(i) Do not use the clause if an exception to the Buy American Act or Balance of Payments Program is known to apply or if using the clause at 252.225-7007, Buy American Act—Trade Agreements—Balance of Payments Program; 252.225-7021, Trade Agreements; or 252.225-7036, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program.

(ii) The clause need not be used if nonqualifying country end products are ineligible for award, including—

(A) End products restricted to domestic or domestic and qualifying country sources under Appropriations and Authorization Act restrictions (see 225.70);

(B) End products restricted to domestic or domestic and Canadian sources (see 225.71); and

(C) End products restricted under the authority of FAR 6.302-3.

(iii) The clause may be used if the contracting officer anticipates a waiver of the restrictions in paragraphs (d)(ii) (A) or (B) of this section.

[56 FR 36367, July 31, 1991, as amended at 57 FR 42630, Sept. 15, 1992; 59 FR 1289, Jan. 10, 1994; 63 FR 11532, Mar. 9, 1998]

225.109-70 Additional provisions and clauses.

(a) Use the clause at 252.225-7002, Qualifying Country Sources as Subcontractors, in solicitations and contracts that include one of the following clauses:

(1) 252.225-7001, Buy American Act and Balance of Payments Program.

(2) 252.225-7007, Buy American Act—Trade Agreements—Balance of Payments Program.

(3) 252.225-7021, Trade Agreements.

(4) 252.225-7036, Buy American Act—North American Trade Agreement Implementation Act—Balance of Payments Program.

(b) When only domestic end products are acceptable, the solicitation must make a statement to that effect.

[63 FR 11532, Mar. 9, 1998]

Subpart 225.2—Buy American Act—Construction Materials

225.202 Policy.

(a)(3) A nonavailability determination is not required for construction materials listed in FAR 25.108(d)(1) or in 225.108(d)(1). For other materials, a nonavailability determination must be approved at the levels specified in 225.102(b)(ii). Use the estimated value of the construction materials to determine the approval level.

[56 FR 36367, July 31, 1991, as amended at 62 FR 34122, June 24, 1997]

Subpart 225.3—Balance of Payments Program

225.302 Policy.

(a) DoD implements the Balance of Payments Program using evaluation factors similar to those which implement the Buy American Act. The Balance of Payments Program restrictions—

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(i) Apply to acquisitions for foreign military sales;

(ii) Do not apply to services, except services which primarily involve the acquisition of supplies;

(iii) Do not apply to qualifying country end products;

(iv) Do not apply to articles, materials, or supplies produced or manufactured in Panama when purchased by and for the use of U.S. forces in Panama; and

(v) For acquisitions subject to the Trade Agreements Act, do not apply to information technology products in Federal Supply Group 70 or 74 that are substantially transformed in the United States.

(b)(i) Before solicitation, the determinations required by FAR 25.302(b)(2) and (3), or a determination that the cost of acquiring domestic end products or services is unreasonable (FAR 25.303(b)), may be made by the following individuals or their immediate deputies—

ARMY

Deputy Chief of Staff for Research, Development and Acquisition, Headquarters, U.S. Army Material Command
Commander-in-Chief, U.S. Army, Europe and DCSLOG, U.S. Army, Europe
Commander, Eighth U.S. Army and Chief of Staff, Eighth U.S. Army
Commander, Corps of Engineers Command
Commander, U.S. Army, Japan
Commander, U.S. Army Medical Research and Development Command
Commander, U.S. Army Forces Command
Commander, U.S. Army, South

NAVY

Commander-in-Chief, U.S. Naval Forces, Europe
Commander, U.S. Naval Forces, Japan
Commander, U.S. Naval Forces, Philippines
Commander-in-Chief, U.S. Atlantic Fleet
Commander-in-Chief, U.S. Pacific Fleet
Commander, Military Sealift Command
Commandant, U.S. Marine Corps
Commander, Naval Facilities Engineering Command
Commanding General, III Marine Amphibious Force

AIR FORCE

Commander, U.S. Air Forces in Europe
Commander, Pacific Air Force
Commander, Air Mobility Command
Commander, Air Force Materiel Command
Commander, Air Combat Command
Commander, Air Force Space Command

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ADVANCED RESEARCH PROJECTS AGENCY

Director, Contracts Management Office

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DEFENSE LOGISTICS AGENCY

Executive Director, Procurement

NATIONAL IMAGERY AND MAPPING AGENCY

Deputy Director for Acquisition, Installations, and Logistics

DEPARTMENT OF DEFENSE EDUCATION
ACTIVITY

Director

(ii) The authority to make the determinations required by 225.302(b)(i) may be redelegated below the levels in paragraph (b)(i) for acquisitions estimated at \$500,000 or less in foreign cost.

(3)(A) This authority is not intended for use in making repetitive supply acquisitions or acquisitions of total annual supply requirements of items available in the United States but not available within the time required.

(B) DoD has determined that requirements for the items on the lists at FAR 25.108(d)(1) and at 225.108(d)(1) can only be filled by a foreign end product.

(4) DoD has determined the following items can only be acquired or performed in the country concerned—

(A) Maintenance and repair of, and acquisition of spare parts for, foreign-manufactured vehicles, equipment, machinery, and systems; provided, in the case of spare parts, the acquisition is restricted to the original manufacturer or its supplier in accordance with DoD standardization policy (see DoD Directive 4120.3, Defense Standardization and Specification Program);

(B) Industrial gases;

(C) Brand drugs specified by the Defense Medical Materiel Board;

(D) Bulk construction materials: sand, gravel, and other soil materials, stone, concrete masonry units, and fired brick; and

(E) Overhaul and repair of vessels, aircraft, and vehicles which—

(1) Are home-ported/stationed/deployed overseas; and

(2) Cannot practically return to the United States or to U.S. operated repair facilities.

(F) Ready-mixed asphalt and portland cement concrete, provided that foreign cost is estimated at not more than \$100,000.

(c)(i) Purchase of materials, equipment, and supplies for construction overseas shall generally be the responsibility of the contractor performing the work; but where necessary to comply with foreign law, to avoid taxation, or to obtain other advantages, consider direct purchase. Consider savings that may be obtained by exemptions from import and other taxes and, to the extent economical, take advantage of tax exemptions available under existing agreements.

(ii) When purchase of materials is the responsibility of the construction contractor, the evaluation differential is determined through the estimating process and applied before solicitation.

[56 FR 36367, July 31, 1991, as amended at 56 FR 67215, Dec. 30, 1991; 57 FR 42630, Sept. 15, 1992; 59 FR 27671, May 27, 1994; 60 FR 61597, Nov. 30, 1995; 63 FR 11532, Mar. 9, 1998; 64 FR 51076, Sept. 21, 1999]

225.303 Procedures.

(a) *Solicitation of offers.* When soliciting orally, advise vendors that only domestic and qualifying country end products are acceptable unless an exception applies or the price of a domestic end product is unreasonable.

(b) *Evaluation.* (i) Use the evaluation procedures in 225.105 instead of the evaluation procedures in FAR 25.303(b). Treatment of duty may differ when delivery is overseas.

(A) Duty may not be applicable to nonqualifying country offers.

(B) The U.S. Government cannot guarantee the exemption of duty for components or end products imported into foreign countries.

(C) Foreign governments may impose duties, and offers including such duties must be evaluated as offered.

(ii) Where the evaluation procedures in 225.105 result in the award of a nonqualifying country end product, the acquisition of domestic end products is unreasonable or inconsistent with public interest. If no domestic end product offers are received, the determination in FAR 25.302(b)(3) is not required.

225.305 Solicitation provision and contract clause.

225.305-70 Additional clause.

In order to allow accurate reporting, by cognizant accounting and disbursing officers, of foreign and domestic expenditures, use the clause at 252.225-7005, Identification of Expenditures in the United States, in all negotiated contracts over \$25,000 where—

(a) For supply contracts, the contract requires end products manufactured or produced in the United States; and

(1) The contractor is a foreign concern; or

(2) The contractor is a domestic concern and the Government will take title outside the United States.

(b) For contracts for construction, repair, and maintenance of real property, or services to be performed outside the United States—

(1) The contractor is a domestic concern; or

(2) The contractor is a foreign concern and the contract requires acquisition of materials, equipment, or services from U.S. sources.

Subpart 225.4—Purchases Under the Trade Agreements Act of 1979

225.401 Definitions.

Caribbean Basin country end product includes petroleum or any product derived from petroleum.

Eligible product means, instead of the definition at FAR 25.401, a designated, NAFTA, or Caribbean Basin country end product in the categories listed in 225.403.70.

[59 FR 1289, Jan. 10, 1994, as amended at 59 FR 23169, May 5, 1994]

225.402 Policy.

(a) To estimate the value of the acquisition, use the total estimated value of end products subject to trade agreement acts (see 225.403-70).

(1) See 225.105 for evaluation of eligible products and U.S. made end products, except when acquiring information technology end products in Federal Supply Group 70 or 74 that are subject to the Trade Agreements Act.